

Cp 347.6  
1923

Inheritance tax law  
of  
North Carolina



The Library  
of the  
University of North Carolina



Collection of North Caroliniana


Endowed by

John Sprunt Hill

of the Class of 1889

Cp 347.6  
1923





Digitized by the Internet Archive  
in 2019 with funding from  
University of North Carolina at Chapel Hill

<https://archive.org/details/inheritancetaxla00nort>

# INHERITANCE TAX LAW

OF

## NORTH CAROLINA



ISSUED BY  
State of North Carolina  
Department of Revenue  
R. A. DOUGHTON, COMMISSIONER  
Raleigh  
1923



CONTENTS

	PAGE
Inheritance Law (chapter 4, Public Laws 1923).....	3-13
Digest of rates of tax and exemptions.....	14-16
Nonresident estates .....	16 17
Interest and discount .....	17
Mortuary table .....	17-18
Annuity table .....	18-19
Life estate and remainders.....	19-20
Table showing present value.....	21
Descents .....	22-26
Curtesy and dower .....	26-28
Distribution .....	28-30
Death by wrongful act.....	30
Advancements .....	30-31
Allotment to after-born child.....	31-33
Year's allowance .....	33

INHERITANCE TAX

SCHEDULE AA

SEC. 6. Rate of inheritance tax.

From and after the passage of this act all real and personal property of whatever kind and nature, including stocks and bonds of foreign and domestic corporations held or deposited either within or without the State, which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State (or if the decedent was not a resident of this State at the time of his death, such property or any part thereof within this State), or any interest therein or income therefrom which shall be transferred by deed, grant, sale, or gift, made within three years of the death of the grantor, bargainor, donor, or assignor: *Provided*, said property conveyed, granted, sold, given or transferred shall, at the time of such deed, grant, or gift, exceed three per cent of the value of the estate of such grantor, bargainor, donor, or assignor, and intended to take effect in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the State, as follows, that is to say: *Provided further*, the property so conveyed, granted, sold, given or transferred shall not be in the possession of and owned by an innocent purchaser for value at the time of the death of the grantor, bargainor, donor or assignor.

Property subject to inheritance tax.

Transfers in contemplation of death of grantor. Proviso: value of property transferred.

Proviso: property held by innocent purchaser for value.

First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue, or lineal ancestor, adopted child, or husband or wife, or son-in-law or daughter-in-law or stepchild of the person who died possessed of such property aforesaid, or any person to whom the decedent stood in the mutually acknowledged relation of a parent, and who began such relationship at or before such person's fifteenth birthday, and whose relationship was continuous from such age until the date of the decedent's death, at the following rates of tax for each one hundred dollars of the clear market value of such interest in such property:

Inheritors of first class.

	Rate of Tax	Rate of tax.
First \$25,000 above exemption.....	1 per cent	
Excess over \$ 25,000 and up to \$100,000....	2 per cent	
Excess over \$100,000 and up to \$250,000....	3 per cent	
Excess over \$250,000 and up to \$500,000....	4 per cent	
Excess over \$500,000.....	5 per cent	

P 23627  
2

Exemptions.

Proviso : grand-children.

The persons mentioned in this class shall be entitled to the following exemptions: Widows, ten thousand dollars; each child under twenty-one (21) years of age, five thousand dollars; all other beneficiaries mentioned in this subsection, two thousand dollars each: *Provided*, a grandchild or grandchildren shall be allowed the single exemption or the pro rata part of the exemption of the parent which he or they represent; and the same rule shall apply to the taking under a will and also in case of specific legacy or devise.

Inheritors of second class.

Second. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or descendant of the brother or sister or uncle or aunt by blood of the person who died possessed as aforesaid, at the following rates of tax for each one hundred dollars of the clear market value of such interest :

Rate of tax.	<i>Rate of Tar</i>
\$25,000 or less.....	3 per cent
Excess over \$ 25,000 and up to \$100,000....	4 per cent
Excess over \$100,000 and up to \$250,000....	5 per cent
Excess over \$250,000 and up to \$500,000....	6 per cent
Excess over \$500,000.....	7 per cent

Inheritors of third class.

Third. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of relationship or collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed as aforesaid, or shall be a body politic or corporate, at the following rates of tax for each one hundred dollars of the clear market value of such interest :

Rate of tax.	<i>Rate of Tar</i>
\$25,000 or less.....	5 per cent
Excess over \$ 25,000 and up to \$100,000....	6 per cent
Excess over \$100,000 and up to \$250,000....	7 per cent
Excess over \$250,000 and up to \$500,000....	8 per cent
Excess over \$500,000.....	9 per cent

Proviso: ex-emption.

*Provided*, that no tax to be imposed or collected under this section on legacies or property passing by will or otherwise, or by the laws of this State to religious, educational, or charitable corporations (not conducted for profit) in this State, and this provision shall apply to all such legacies or property passing by will or by the laws of this State since March twelve, one thousand nine hundred and thirteen; nor shall any tax be imposed in any case where the whole amount of such legacy or devise does not exceed two hundred dollars (\$200.00) in value.

Deductions.

Fourth. That in calculating the value of the distributive share the following deductions, and no others, shall be allowed: Debts of the decedent, taxes accrued and unpaid, Federal estate taxes and estate and inheritance taxes paid to other states, and death duties paid to foreign countries; drainage and street assessments,



funeral and burial expenses, all amounts actually expended for monuments not exceeding the sum of five hundred dollars, commissions of executors and administrators actually allowed and paid, and cost of administration, including reasonable attorneys' fees.

Fifth. That whenever an estate subject to the tax under this act shall be settled or divided among the heirs at law, legatees, or devisees, without the qualification and appointment of a personal representative, the clerk of the Superior Court of the county wherein the estate is situated shall certify the same to the Commissioner of Revenue, whereupon the Commissioner of Revenue shall proceed to appraise said estate and collect the inheritance tax thereon as prescribed by this act.

Certificate of settlement without representation.

Appraisal by Commissioner of Revenue.

Sixth. All advancements and gifts equal to or in excess of three per cent of the decedent's estate at the time such advancements or gifts were made, and made within three years of the decedent's death, shall be subject to the inheritance tax herein prescribed as of the date of the death of the decedent. Any transfers or conveyances made upon consideration that was grossly inadequate within the same period shall be an inheritance to the extent that the consideration was inadequate at the time it was made, and shall be subject to the inheritance tax herein prescribed as of the date of the death of the decedent.

Advancements and gifts subject to inheritance tax.

Transfers on inadequate consideration.

Seventh. The words "such property or any part thereof or interest therein within this State," wherever appearing in this act, shall include in its meaning bonds and shares of stock in any incorporated company incorporated in this State, regardless of whether or not any such incorporated company shall have any or all of its capital stock invested in property outside of this State and doing business outside of this State, and the tax on the transfer of any bonds or shares of stock in any such incorporated company owning property and doing business outside of this State shall be paid before waivers are issued for the transfer of such bonds or shares of stock as hereinabove provided for.

Definition of "such property."

Tax on transfer of bonds and stock.

The words "estate" and "property" wherever used in this act, except where the subject or context is repugnant to such construction, shall be construed to mean the interest of the testator, intestate, grantor, bargainor, or vendor, passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee, or vendee, not exempt under the provisions of this act, whether such property be situated within or without this State. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession, or enjoyment, present or future, by distribution, by statute, descent, devise, bequest, grant, deed, bargain, sale, or gift.

"Estate" and "property" construed.

"Transfer" construed.

Any incorporated company not incorporated in this State and owning property in this State which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value two hundred dollars before the inheritance tax, if any, has been paid, shall become

Liability on foreign company recording transfer.

Property subject to execution.

Waiver by Commissioner of Revenue.

Blank forms.

Value of bonds or stock.  
Settlement of inheritance taxes.

Return of taxes collected.

Enforcement of reports.

Exercise of power of appointment deemed transfer.

Rate determined by relationship.

Transfer presumed on failure to exercise power.

Liability discharged by payment.

Discount allowed.

liable for the payment of the said tax, and any property held by such company in this State shall be subject to execution to satisfy same. A receipt or waiver signed by the Commissioner of Revenue of North Carolina shall be full protection for any such company in the transfer of any such stock or bonds.

The Commissioner of Revenue shall prepare and furnish, upon application, blank forms covering such information as may be necessary to determine the amount of inheritance tax due the State of North Carolina on the transfer of any such bonds or stock; he shall determine the value of such bonds or stock, and shall have full authority to do all things necessary to make full and final settlement of all such inheritance taxes due or to become due, and shall make prompt return to the State Treasurer of all such taxes collected.

The Commissioner of Revenue shall have authority, under penalties provided in section eighty-nine of this act, to require that any reports necessary to a proper enforcement of this act be made by any such incorporated company owning property in this State.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will, and the rate shall be determined by the relationship between the beneficiary under the power and the donor; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

SEC. 7. *When all heirs, legatees, etc., are discharged from liability.*

All heirs, legatees, devisees, administrators, executors, and trustees shall only be discharged from liability for the amount of such taxes, the settlement of which they may be charged with, by paying the same for the use aforesaid as hereinafter provided.

SEC. 8. *Discount for payment in six months; interest after twelve months; penalty after two years.*

All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor, or vendor, and if



the same are paid within six months from the date of the death of the testator, intestate, grantor, donor, vendor, a discount of three per centum shall be allowed and deducted from such taxes; if not paid within one year from date of the death of the testator, intestate, grantor, donor, or vendor, such tax shall bear interest at the rate of six per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor, or vendor, for a period of one year, and ten per centum per annum thereafter until the same is paid.

Interest after one year.

Interest after two years.

The penalty of ten per cent herein imposed may be remitted to simple interest by the Commissioner of Revenue in case of unavoidable delay in settlement of estate or of pending litigation. And the Commissioner of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule with respect to so much of the estate as was involved in such litigation or other unavoidable cause or delay: *Provided*, that time for payment and collection of such tax may be extended by the Commissioner of Revenue for good reason shown.

Commissioner of Revenue may remit penalty.

Commissioner may remit interest.

Proviso : extension of time.

SEC. 9. *Collection to be made by sheriff if not paid in two years.*

If taxes imposed by this act are not paid within two years after the death of the decedent, it shall be the duty of the Commissioner of Revenue to certify to the sheriff of the county in which the estate is located the amount of tax due upon such inheritance, and the sheriff shall collect the same as other taxes, with an addition of two and one-half per cent as sheriff's fees for collecting same; and the sheriff is hereby given the same rights of levy and sale upon any property upon which the said tax is payable as is given in the Machinery Act for the collection of other taxes. The sheriff shall make return to the Commissioner of Revenue of all such taxes within thirty days after collection.

Certificate of non-payment sent to sheriff.

Collection.

Fee to sheriff.

Collection by distress.

Returns within thirty days.

SEC. 10. *Executor, etc., shall deduct tax.*

The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to said tax shall deduct therefrom at the rate prescribed, or if the legacy or share in the estate be not money, he shall demand payment of a sum to be computed at the same rates upon the appraised value thereof for the use of the State; and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall

Representative or trustee allowed credit for payments.

Demand for payment of tax on legacies.

Payment or delivery not enforceable before payment of tax.

Sale of legacy for tax.

Distribution of balance.



Sums retained to be paid promptly.

be distributed as is or may be directed by law; and every sum of money retained by any executor or administrator or paid into his hands on account of any legacy or distributive share for the use of the State shall be paid by him to the proper officer without delay.

SEC. 11. *Legacy for life, etc., tax to be retained, etc., upon the whole amount.*

Tax on devises for life or term or on contingencies.

If the legacy or devise subject to said tax be given to a beneficiary for life or for a term of years, or upon condition or contingency, with remainder to take effect upon the termination of the life estate or the happening of the condition or contingency, the tax on the whole amount shall be due and payable as in other cases, and said tax shall be apportioned between such life tenant and the remainderman, such apportionment to be made by computation based upon the mortuary and annuity tables set out as sections one thousand seven hundred and ninety and one thousand seven hundred and ninety-one of the Consolidated Statutes, and upon the basis of six per centum of the gross value of the estate for the period of expectancy of the life tenant in determining the value of the respective interests.

Tax on whole amount due. Apportionment of tax.

Basis of computation for apportionment.

SEC. 12. *Legacy charged upon real estate, heir or devisee to deduct and pay to executor, etc.*

Legacy charged on real estate paid by heir or devisee. Deduction.

Whenever such legacy shall be charged upon or payable out of real estate the heir or devisee of such real estate, before paying the same to such legatee, shall deduct therefrom, at the rates aforesaid, and pay the amount so deducted to the executor or administrator, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decree of the court in the same manner as the payment of such legacy may be enforced: *Provided*, that all taxes imposed by this act shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property, from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the State.

Charge on real estate until paid.

Proviso: lien for taxes.

Lien continued until payment.

SEC. 13. *Computation of tax on nonresident decedents.*

Computation of tax on nonresident decedents.

A tax shall be assessed on the transfer of property made subject to tax as aforesaid in this State of a nonresident decedent if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations taxable under this act, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this act if such nonresident decedent had been a resident of this State, and all his property, real and personal, had been located within this State, as such taxable property within this State bears to the entire estate, wherever situated: *Provided*, that nothing in this clause contained shall apply to any specific bequest or devise of any property in this State.

Ratio of tax.

Proviso: specific bequest or devise.

SEC. 13a. *Specific devises or bequests of nonresident decedents.*

A specific devise or bequest of a nonresident decedent of property within this State shall be taxed at the rate applicable to strangers in the blood, without deduction or exemption: *Provided*, that if the executor of such estate shall file with the Commissioner of Revenue a full and complete report of the entire estate, wherever situate, and the age and relationship of the beneficiary to said decedent, the proportional part of the deductions and exemptions shall be allowed, and at the rate of tax applicable to such relationship in accordance with section six of this act.

Specific devise or bequest by nonresident decedent. Proviso: deductions and exemptions allowed on report of entire estate.

SEC. 14. *Foreign executor or administrator transferring stock shall pay the tax on such transfer.*

Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or bonds in this State standing in the name of the decedent or in trust for a decedent, which shall be liable for the said tax, such tax shall be paid on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

Foreign executor or administrator to pay tax on transfer.

The Commissioner of Revenue is given authority to make appraisal of such stocks or bonds, and settlement of taxes due under this section. Tax shall be computed as provided in section twelve of this act, and receipt or waiver issued by the Commissioner of Revenue shall be complete protection to any such corporation for the transfer of such stocks or bonds.

Liability of corporation permitting transfer.

Commissioner of Revenue to make appraisals and settlement. Computation of tax.

Receipt or waiver protection to corporation.

SEC. 14a. *Duties of the clerks of the Superior Court.*

It shall be the duty of the clerk of the Superior Court of each of the several counties of the State to make up and transmit to the Commissioner of Revenue, on or before the tenth day of each month, a list of persons who died, leaving property in his county, during the previous month or those who died prior at any time thereto and whose death had not been reported by said clerk to the Commissioner of Revenue, together with the name and post office address of the executor, administrator, or other personal representative of the estate of such deceased person, and in case there is no personal representative, the names and post office addresses of the heirs at law, legatees, distributees and devisees in so far as such clerk may have such information: *Provided*, that the clerk shall make no report of a death where the estate of the decedent is less than two thousand dollars in value when the beneficiaries are husband or wife or children or grandchildren of the decedent.

Clerks of Superior Court to report monthly.

Details of report.

Proviso: deaths not reported.

It shall also be the duty of the clerk of the Superior Court of each of the several counties of the State to enter in a book, prepared and furnished by the Commissioner of Revenue, to be kept for that purpose, and which shall be a public record, a condensed copy of the settlement of inheritance taxes of each estate, together

Record of settlements of inheritance tax.



with a copy of the receipt showing payment, or a certificate showing no tax due, as shall be certified to him by the Commissioner of Revenue.

Payments to  
clerks.

For these services, where performed by the clerk, the clerk shall be paid by the Commissioner of Revenue when certificates and receipts are sent in to be recorded, as follows: For recording the certificates of the Commissioner of Revenue where the tax received by the State is less than five dollars (\$5.00), or a certificate showing no tax due, the sum of one dollar (\$1.00). For recording the certificate of the Commissioner of Revenue showing that the tax received by the State is more than five dollars (\$5.00) and less than five hundred dollars (\$500.00), he shall be paid the sum of five dollars (\$5.00). For recording the certificate of the Commissioner of Revenue showing that the tax received by the State is more than five hundred dollars (\$500.00) and less than one thousand dollars (\$1,000.00), he shall be paid the sum of ten dollars (\$10.00). For recording the certificate of the Commissioner of Revenue showing that the tax received by the State is more than one thousand dollars (\$1,000.00) and less than two thousand dollars (\$2,000.00), he shall be paid the sum of fifteen dollars (\$15.00). For recording the certificate of the Commissioner of Revenue showing that the tax received by the State is more than two thousand dollars (\$2,000.00) and less than three thousand dollars (\$3,000.00), he shall be paid the sum of twenty dollars (\$20.00). For recording the certificate of the Commissioner of Revenue showing that the tax received by the State is in excess of three thousand dollars (\$3,000.00), he shall be paid the sum of twenty-five dollars (\$25.00), which sum shall be the maximum amount paid for recording the Commissioner of Revenue's certificate in any one estate.

Fees allowed  
clerks in addition  
to other fees and  
salaries.

Proviso : fees on  
estates now in pro-  
cess of settlement.

Proviso : fees on  
estates becoming  
liable hereafter.

The clerks of the Superior Court of the several counties shall be allowed the fees provided for in this section in addition to other fees or salaries received by them, and any and all provisions in local acts in conflict with this act are hereby repealed: *Provided, however*, on estates now in process of settlement on which the final settlement of inheritance tax is made prior to December first, one thousand nine hundred and twenty-three, the rate of fees and commissions shall be as provided in chapter thirty-four, Public Laws one thousand nine hundred and twenty-one: *Provided further*, that each estate becoming liable after the passage of this act, clerks shall receive no fees except as provided herein.

SEC. 15. *Information by administrator and executor.*

Statements by  
administrators  
and executors.

Details of state-  
ments.

Every administrator shall prepare a statement in duplicate, showing as far as can be ascertained the names of all the heirs at law and their relationship to decedent, and every executor shall prepare a like statement, accompanied by a copy of the will, showing the relationship to the decedent of all legatees, distributees, and devisees named in the will, and the age at the time of death of the decedent of all legatees, distributees, and



devises to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent, together with the post office address of executor, administrator, or trustee. If any of the heirs at law, distributees and devisees are minor children of the decedent, such statement shall also show the age of each of such minor children. The statement shall also contain a complete inventory of all the real property of the decedent located in this State, and of all personal property of the estate, together with an appraisal under oath of the value of each class of property embraced in the inventory, and the value of the whole, together with any deductions permitted by this statute, so far as they may be ascertained at the time of filing such statement; and also the full statement of all gifts or advancements made by deed, grant, or sale, to any person or corporation, in trust or otherwise, within three years prior to the death of the decedent. The statement herein provided for shall be filed with the Commissioner of Revenue at Raleigh, N. C., six months after the qualification of the executor or administrator, upon blank forms to be prepared by the Commissioner of Revenue. If any administrator or executor fails or refuses to comply with any of the requirements of this section, he shall be liable to a penalty of not more than one thousand dollars, which shall be recovered by the Commissioner of Revenue for use of the State in an action to be brought in the Superior Court of the county in which the estate is being administered. Every executor or administrator may make a tentative settlement of the inheritance tax with the Commissioner of Revenue, based upon the sworn inventory provided in this section: *Provided*, that this section shall not apply to estates of less than two thousand dollars in value when the beneficiaries are husband or wife or children or grandchildren of the decedent.

Age of heirs, distributees, or devisees, if minors.

Inventory of real property in this State and all personal property.  
Sworn appraisal.

Deductions permitted.

Gifts and advancements.

Statements filed with Commissioner of Revenue.  
Time for filing.

Blank forms.  
Penalty for failure or refusal.

Recovery of penalty.

Tentative settlement.

Proviso : estates excepted.

#### SEC. 16. *Supervision by Commissioner of Revenue.*

The Commissioner of Revenue shall have complete supervision of the enforcement of all provisions of the Inheritance Tax Act and the collection of all inheritance taxes found to be due thereunder, and shall make all necessary rules and regulations for the just and equitable administration thereof. He shall regularly employ such deputies, attorneys, examiners or special agents as may be necessary for the reasonable carrying out of its full intent and purposes. Such deputies, attorneys, examiners or special agents shall, as often as required to do so, visit the several counties of the State to inquire and ascertain if all inheritance taxes due from estates of decedents, or heirs at law, legatees, devisees, or distributees thereof have been paid; to see that all statements required by this act are filed by administrators and executors, or by beneficiaries under wills where no executor is appointed; to examine into all statements filed by such administrators and executors; to require such administrators and executors to furnish any additional information that may be deemed

Supervision by Commissioner of Revenue.

Rules and regulations.  
Deputies, attorneys, examiners and special agents.

Inquiries as to enforcement of law by counties.

Appraisal by agents of department.	necessary to determine the amount of tax that should be paid by such estate. If not satisfied, after investigation, with valuations returned by the administrator or executor, the deputy, attorney, examiner, or appraiser shall make an additional appraisal
Special appraiser.	after proper examination and inquiry, or may, in special cases, recommend the appointment by the Commissioner of Revenue of
Pay of special appraiser.	a special appraiser, who, in such case, shall be paid five dollars per day and expenses for his services. The administrator or
Appeal from additional appraisal to Commissioner of Revenue.	executor, if not satisfied with such additional appraisal, may appeal within thirty days to the Commissioner of Revenue, which
Appeal to Superior Court.	appeal shall be heard and determined as other cases. From this decision the administrator or executor shall have the right to
Rules governing appeal.	appeal to the Superior Court of the county in which said estate is situated for the purpose of having said issue tried; said appeal
Proviso : tax to be first paid. Repayment if directed by court.	to be made in the same way and manner as is now provided by law for appeals from the decisions of the Corporation Commis-
	sion: <i>Provided</i> , that the tax shall first be paid, and if it shall be determined upon trial that said tax or any part thereof was
	illegal or excessive, judgment shall be rendered therefor with
	interest, and the amount of tax so adjudged overpaid or declared
	invalid shall be certified by the clerk of the court to the Commis-
	sioner of Revenue, who is authorized and directed to draw his
	warrant on the State Treasurer for the amount thereof.

SEC. 17. *Proportion of tax to be repaid upon certain conditions.*

Legatees required to refund legacy to be repaid tax.	Whenever debts shall be proven against the estate of a decedent, after the distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the State Treasury, or shall be refunded by the State Treasurer if it has been so paid in, upon certificate of the Commissioner of Revenue.
--	--

SEC. 18. *Commissioner of Revenue may order executor, etc., to file account, etc.*

Citation to enforce filing of reports and accounts and payments of tax.	If the Commissioner of Revenue shall discover that reports and accounts have not been filed, and the tax, if any, has not been paid as provided in this chapter, he shall issue a citation to the executor, administrator or trustee of the decedent whose estate is subject to tax, to appear at a time and place therein
Appearance day.	mentioned, not to exceed twenty days from the date thereof, and show cause why said report and account should not be filed and
Service of notice.	said tax paid, and when personal service cannot be had, notice shall be given as provided for service of summons by publication
Judgment for tax, interest and cost.	in the county in which said estate is located; and if said tax shall be found to be due, the said delinquent shall be adjudged
Enforcement of payment after thirty days.	to pay said tax, interest and cost. If said tax shall remain due and unpaid for a period of thirty days after notice thereof, the



Commissioner of Revenue shall certify the same to the sheriff, who shall make collection of said tax, cost and commissions for collection, as provided in section 8a of this chapter.

SEC. 19. *Failure of administrator, executor, or trustee to pay tax.*

Any administrator, executor or trustee who shall fail to pay the lawful inheritance taxes due upon any estate in his hands or under his control within two years from the time of his qualification shall be liable for the amount of said taxes, and the same may be recovered in an action against such administrator, executor, or trustee and the sureties on his official bond. Any clerk of the court who shall allow any administrator, executor, or trustee to make a final settlement of his estate without having paid the inheritance tax due by law, and exhibiting his receipt from the Commissioner of Revenue therefor, shall be liable upon his official bond for the amount of such taxes.

Liability of administrator, executor, or trustee after two years.  
Action for recovery.  
Liability of clerk allowing final settlement before payment of tax.

SEC. 20. *Failure of clerk to collect and pay over tax.*

If the Commissioner of Revenue shall ascertain that any clerk has failed to collect or pay over any inheritance tax which he should have collected, the Commissioner of Revenue shall demand payment of the same by said clerk at once, and if such clerk shall fail to account for or pay over such tax within sixty days from such demand, or to show that he has not been negligent and has made diligent effort to collect the same, he shall be liable on his official bond for double the said tax, to be recovered by the Commissioner of Revenue in an action in the Superior Court of the county in which said clerk resides: *Provided*, that this section shall not apply to clerks where the estates have been settled and final account of the estate approved prior to the first day of March, one thousand nine hundred and fifteen.

Demand on clerk for tax.  
Liability of clerk on bond.  
Action for recovery.  
Proviso : date when prior settlements are exonerated.

SEC. 21. *Executor defined.*

That whenever the word "executor" appears in this section, entitled "Inheritance Tax," that it shall include executors, administrators, collectors, committees, trustees, and all fiduciaries.

"Executor" defined.



DIGEST OF RATES OF TAX AND EXEMPTIONS

For Estates of Parties Decedent Since March 8, 1921

Exemptions: Widows, ten thousand dollars; each child under twenty-one (21) years of age, five thousand dollars; all other beneficiaries mentioned in the first succeeding paragraph, two thousand dollars each; grandchildren are allowed the single exemption of the child they represent, and in cases of specific legacy or bequest the proportion of exemption to which they would be entitled if they took as representatives of the parent. No tax is imposed on legacies or property passing by will or otherwise or by the laws of this State to religious, educational, or charitable corporations (not conducted for profit) in this State. No tax is imposed in any case where the amount of the legacy or devise does not exceed two hundred dollars in value.

Rates of tax: To husband or wife, lineal issue or lineal ancestor, adopted child, son-in-law or daughter-in-law, stepchild, or any person to whom decedent stood in the mutually acknowledged relation of parent and who began such relationship at or before such person's fifteenth birthday and whose relationship was continuous from such age until date of decedent's death:

	<i>Rate of Tax</i>
First \$25,000 above exemption.....	1 per cent
Excess over \$ 25,000 and up to \$100,000.....	2 per cent
Excess over \$100,000 and up to \$250,000.....	3 per cent
Excess over \$250,000 and up to \$500,000.....	4 per cent
Excess over \$500,000.....	5 per cent

To brother or sister or descendant of brother or sister or uncle or aunt by blood of the person who died possessed:

	<i>Rate of Tax</i>
\$25,000 or less.....	3 per cent
Excess over \$ 25,000 and up to \$100,000.....	4 per cent
Excess over \$100,000 and up to \$250,000.....	5 per cent
Excess over \$250,000 and up to \$500,000.....	6 per cent
Excess over \$500,000.....	7 per cent

To any other degree of relationship or collateral consanguinity or to strangers in blood or to a body politic or corporate:

	<i>Rate of Tax</i>
\$25,000 or less.....	5 per cent
Excess over \$ 25,000 and up to \$100,000.....	6 per cent
Excess over \$100,000 and up to \$250,000.....	7 per cent
Excess over \$250,000 and up to \$500,000.....	8 per cent
Excess over \$500,000.....	9 per cent

Between August 25, 1920, and March 8, 1921, when the person to whom the property was devised or bequeathed stood in the relation of child to the person who died possessed of the property, such beneficiary was entitled to the same exemptions and rate of tax set forth for children of decedent between March 10, 1919, and March 8, 1921. This applied to all cases where the tax had not been paid, and the clerk of the court determined whether any person to whom property was so devised or bequeathed stood in such relationship.

See Extra Session, 1920, c. 32, s. 1.

**For Estates of Parties Decedent Between March 10, 1919,  
and March 8, 1921**

Exemption: To widow, \$10,000; child under twenty-one years of age, \$5,000; lineal issue, lineal ancestor, husband or adopted child, \$2,000 each; grandchildren to have single exemption of child they represent. No exemption to brothers or sisters or other collateral heirs, or to strangers in blood.

No tax is imposed on legacies or property passing by will or otherwise or by the laws of this State to religious, educational, or charitable corporations (not conducted for profit) in this State. No tax is imposed in any case where the amount of the legacy or devise does not exceed two hundred dollars in value.

Rates of tax: To husband or wife, lineal issue or lineal ancestor adopted child:

	<i>Rate of Tax</i>
First \$25,000 above exemption.....	1 per cent
Excess over \$ 25,000 and up to \$100,000.....	2 per cent
Excess over \$100,000 and up to \$250,000.....	3 per cent
Excess over \$250,000 and up to \$500,000.....	4 per cent
Excess over \$500,000.....	5 per cent

To brother or sister or descendant of the brother or sister:

	<i>Rate of Tax</i>
\$25,000 or less.....	3 per cent
Excess over \$ 25,000 and up to \$100,000.....	4 per cent
Excess over \$100,000 and up to \$250,000.....	5 per cent
Excess over \$250,000 and up to \$500,000.....	6 per cent
Excess over \$500,000.....	7 per cent

To any other degree of collateral relationship, or to strangers in blood or to a body politic or corporate:

	<i>Rate of Tax</i>
\$25,000 or less.....	5 per cent
Excess over \$ 25,000 and up to \$100,000.....	6 per cent
Excess over \$100,000 and up to \$250,000.....	7 per cent
Excess over \$250,000 and up to \$500,000.....	8 per cent
Excess over \$500,000.....	9 per cent

**For Estates of Parties Decedent Between March 9, 1915,  
and March 10, 1919**

The exemptions and the rate of tax are the same as for parties decedent between March 10, 1919, and March 8, 1921, except as follows: Rate: Husband or wife, lineal issue or lineal ancestor, "Above exemption up to \$25,000.00 1 per cent," instead of "First \$25,000.00 above exemption 1 per cent."

**For Estates of Parties Decedent Between March 12, 1913,  
and March 9, 1915**

Exemption: To widow, \$10,000; child under twenty-one years of age, \$5,000; lineal issue, lineal ancestor, adopted child, husband, \$2,000 each; grandchildren to have single exemption of child they represent. No exemption to brother or sister or other collateral heirs, or strangers in blood.

Rates of tax: To husband or wife, lineal issue or lineal ancestor, \$1.00 for each and every one hundred dollars of the clear value of such interest, above exemption.



Brother or sister or descendant of brother or sister at the rate of \$3.00 for each and every one hundred dollars of the clear value of such interest, with no exemption.

Brother or sister of the father or mother or a descendant of the brother or sister of the father or mother at the rate of \$5.00 for each and every hundred dollars of the clear value of such interest, with no exemption.

Any other degree of collateral relationship or to strangers in blood, or body politic or corporate, at the rate of \$10.00 for each and every hundred dollars of clear value of such interest, with no exemption.

**For Estates of Parties Decedent Between March 6, 1905,  
and March 12, 1913**

Exemption: Any beneficiary taking property by will or the intestate laws of this State shall be entitled to an exemption of \$2,000; except husband or wife, or religious or charitable institutions, which shall be exempt from any tax or duty.

Rates of tax: Lineal issue, lineal ancestor, brother or sister, adopted child, at the rate of seventy-five cents for each and every one hundred dollars of the clear value of such interest, above exemption. Descendant of brother or sister at the rate of \$1.50 for each and every one hundred dollars of the clear value of such interest, above exemption.

Brother or sister of the father or mother or descendant of the brother or sister of the father or mother at the rate of \$3.00 for each and every hundred dollars of the clear value of such interest, above exemption.

Brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother at the rate of \$4.00 for each and every hundred dollars of the clear value of such interest above exemption.

Any other degree of collateral relationship or to strangers in blood, or any body politic or corporate, at the rate of \$5.00 for each and every hundred dollars of the clear value of such interest where the interest shall exceed \$2,000 and shall not exceed \$5,000; where the interest shall exceed \$5,000 but shall not exceed the value of \$10,000 the rates of tax above set forth shall be multiplied by one and one-half; where the value of the interest shall exceed \$10,000 but shall not exceed the value of \$25,000 such rates of tax shall be multiplied by two; where the value of such interest shall exceed \$25,000 but shall not exceed the value of \$50,000 such rates of tax shall be multiplied by two and one-half; and where the amount of such interest shall exceed the sum of \$50,000 such rates of tax shall be multiplied by three: *Provided*, that when the property is devised or bequeathed to a trustee for another or others, the rate of inheritance tax to be paid on such devise or bequest shall be determined by the relationship of the *cestui que trust* or *cestuis que trust* to the testator.

**NONRESIDENT ESTATES**

Tax upon estates of nonresident decedents having property in the State of North Carolina is determined by calculating the tax upon the whole estate under the North Carolina law and computing the percentage of the tax upon the basis of the ratio of the North Carolina property to the whole estate.



“Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or bonds in this State standing in the name of the decedent or in trust for a decedent, which shall be liable for the said tax, such tax shall be paid on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.” (Extract Public Laws 1901 to 1923.)

The Commissioner of Revenue is given authority to make appraisal of such stocks or bonds, and settlement of taxes due under this section.

Taxes on nonresident estates will be computed in the office of the commissioner in Raleigh.

### INTEREST AND DISCOUNT

#### Interest Rate From March 15, 1901, to March 5, 1917

After two years, six per cent interest per annum until paid.

#### Interest and Discount Rate Between March 6, 1917, and March 9, 1919

Discount of two and a half per cent for payment within six months from date of liability.

Interest after one year at six per cent for a period of one year and ten per cent thereafter until paid.

#### Interest and Discount Rate After March 10, 1919

Discount of three per cent for payment within six months.

Interest after one year at six per cent for a period of one year and ten per cent thereafter until paid.

### MORTUARY TABLE

**Mortuary tables as evidence.** Whenever it is necessary to establish the expectancy or continued life of any person from any period of such person's life, whether he be living at the time or not, the table hereto appended shall be received in all courts and by all persons having power to determine litigation, as evidence, with other evidence as to the health, constitution and habits of such person, of such expectancy represented by the figures in the columns headed by the words “completed age” and “expectation” respectively:

<i>Completed Age</i>	<i>Expectation</i>	<i>Completed Age</i>	<i>Expectation</i>
10 .....	43.7	28 .....	36.7
11 .....	48.1	29 .....	36.0
12 .....	47.4	30 .....	35.3
13 .....	46.8	31 .....	34.6
14 .....	46.2	32 .....	33.9
15 .....	45.5	33 .....	33.2
16 .....	44.9	34 .....	32.5
17 .....	44.2	35 .....	31.8
18 .....	43.5	36 .....	31.1
19 .....	42.9	37 .....	30.4
20 .....	42.2	38 .....	29.6
21 .....	41.5	39 .....	28.9
22 .....	40.9	40 .....	28.2
23 .....	40.2	41 .....	27.5
24 .....	39.5	42 .....	26.7
25 .....	38.8	43 .....	26.0
26 .....	38.1	44 .....	25.3
27 .....	37.4	45 .....	24.5

<i>Completed Age</i>	<i>Expectation</i>	<i>Completed Age</i>	<i>Expectation</i>
46 .....	23.8	71 .....	8.0
47 .....	23.1	72 .....	7.6
48 .....	22.4	73 .....	7.1
49 .....	21.6	74 .....	6.7
50 .....	20.9	75 .....	6.3
51 .....	20.2	76 .....	5.9
52 .....	19.5	77 .....	5.5
53 .....	18.8	78 .....	5.1
54 .....	18.1	79 .....	4.8
55 .....	17.4	80 .....	4.4
56 .....	16.7	81 .....	4.1
57 .....	16.1	82 .....	3.7
58 .....	15.4	83 .....	3.4
59 .....	14.7	84 .....	3.1
60 .....	14.1	85 .....	2.8
61 .....	13.5	86 .....	2.5
62 .....	12.9	87 .....	2.2
63 .....	12.3	88 .....	1.9
64 .....	11.7	89 .....	1.7
65 .....	11.1	90 .....	1.4
66 .....	10.5	91 .....	1.2
67 .....	10.0	92 .....	1.0
68 .....	9.5	93 .....	.8
69 .....	9.0	94 .....	.6
70 .....	8.5	95 .....	.5

C. S., 1790.

Table in this section competent as evidence without being specially introduced in evidence on trial: *Coley v. Statesville*, 121-301—but not conclusive evidence, and is to be considered with all other testimony relevant to issue, *Sledge v. Lumber Co.*, 140-461; *Odom v. Lumber Co.*, 173-134—and in estimating value of life of decedent it is proper for jury to consider health and habits of deceased at time of death, *Russell v. Steamboat Co.*, 126-967; *Coley v. Statesville*, 121-301.

For example of estimation of value of life estate of deceased in fund according to section, see *Miller v. Asheville*, 112-759.

For proper mode of estimating value of life of decedent according to above table, see *Pickett v. R. R.*, 117-616; *Poe v. R. R.*, 141-525; *Mendenhall v. R. R.*, 123-275; *Benton v. R. R.*, 122-1007; *Carter v. R. R.*, 139-501, and cases cited; see, also, C. S., 161.

For general discussion of the table in section, see *Russell v. Steamboat Co.*, 126-967.

ANNUITY TABLE

**Present worth of annuities.** Whenever it is necessary to establish the present worth or cash value of an annuity to a person, payable annually during his life, such present worth or cash value may be ascertained by the use of the following table in connection with the mortuary tables established by law, the first column representing the number of years the annuity is to run, and the second column representing the present cash value of an annuity of one dollar for such number of years, respectively:

<i>No. of Years Annuity is to Run</i>	<i>Cash Value of the An- nuity of \$1</i>	<i>No. of Years Annuity is to Run</i>	<i>Cash Value of the An- nuity of \$1</i>
1 .....	\$ 0.943	11 .....	\$ 7.886
2 .....	1.833	12 .....	8.383
3 .....	2.673	13 .....	8.852
4 .....	3.465	14 .....	9.295
5 .....	4.212	15 .....	9.712
6 .....	4.917	16 .....	10.106
7 .....	5.582	17 .....	10.477
8 .....	6.209	18 .....	10.827
9 .....	6.801	19 .....	11.158
10 .....	7.360	20 .....	11.469

<i>No. of Years Annuity is to Run</i>	<i>Cash Value of the An- nuity of \$1</i>	<i>No. of Years Annuity is to Run</i>	<i>Cash Value of the An- nuity of \$1</i>
21 .....	\$11.764	36 .....	\$14.621
22 .....	12.042	37 .....	14.737
23 .....	12.304	38 .....	14.846
24 .....	12.550	39 .....	14.949
25 .....	12.783	40 .....	15.046
26 .....	13.003	41 .....	15.135
27 .....	13.211	42 .....	15.219
28 .....	13.406	43 .....	15.299
29 .....	13.591	44 .....	15.374
30 .....	13.765	45 .....	15.445
31 .....	13.929	46 .....	15.514
32 .....	14.084	47 .....	15.579
33 .....	14.230	48 .....	15.641
34 .....	14.368	49 .....	15.699
35 .....	14.498	50 .....	15.754

The present cash value of the annuity for a fraction of a year may be ascer-  
tained as follows: Multiply the difference between the cash value of the  
annuities for the preceding and succeeding full years by the fraction of the  
year in decimals and add the sum to the present cash value for the preceding  
full year. When a person is entitled to the use of a sum of money for life, or  
for a given time, the interest thereon for one year may be considered as an  
annuity, and the present cash value be ascertained as herein provided.

C. S., 1791.

Word "annuity" defined: Poe v. R. R., 141-526. In action to recover damages for in-  
juries causing death, court should not permit jury to consider section for purpose of ascer-  
taining present value of intestate's life: Poe v. R. R., 141-525. For discussion of section,  
see Ibid. As bearing incidentally on section, see Ex parte Williams, 74-68.  
In estimating present value of annuity during widowhood, it is considered as for life:  
In re Inheritance Tax, 172-170.

LIFE ESTATES AND REMAINDERS

The following is a table used by the State Department of Revenue, showing  
percentage value of life estates and remainders from every age of life tenant  
from 10 to 95 years:

<i>Age</i>	<i>Life Estate</i>	<i>Remainder</i>
10 .....	94.15 .....	5.85
11 .....	93.94 .....	6.06
12 .....	93.69 .....	6.31
13 .....	93.46 .....	6.54
14 .....	93.23 .....	6.77
15 .....	92.95 .....	7.05
16 .....	92.70 .....	7.30
17 .....	92.39 .....	7.61
18 .....	92.07 .....	7.93
19 .....	91.79 .....	8.21
20 .....	91.45 .....	8.55
21 .....	91.10 .....	8.90
22 .....	90.77 .....	8.23
23 .....	90.39 .....	9.61
24 .....	89.99 .....	10.01
25 .....	89.57 .....	10.43
26 .....	89.15 .....	10.85
27 .....	88.69 .....	11.31
28 .....	88.22 .....	11.78
29 .....	87.73 .....	12.27



<i>Age</i>	<i>Life Estate</i>	<i>Remainder</i>
30	87.22	12.78
31	86.69	13.31
32	86.13	13.87
33	85.56	14.44
34	84.95	15.05
35	84.33	15.67
36	83.68	16.32
37	82.99	17.01
38	82.18	17.82
39	81.44	18.56
40	80.67	19.33
41	79.86	20.14
42	78.90	21.10
43	78.02	21.98
44	77.10	22.90
45	76.02	23.98
46	75.02	24.98
47	73.98	26.02
48	72.89	27.11
49	71.60	28.40
50	70.41	29.59
51	69.19	30.81
52	67.90	32.10
53	66.56	33.44
54	65.17	34.83
55	63.64	36.36
56	62.21	37.29
57	60.87	39.13
58	59.24	40.76
59	57.50	42.50
60	56.03	43.97
61	54.47	45.53
62	52.89	47.11
63	51.16	48.84
64	49.43	50.57
65	47.64	62.36
66	45.77	54.23
67	44.17	55.83
68	42.53	57.47
69	40.80	59.20
70	39.06	60.94
71	37.27	62.73
72	35.78	64.22
73	33.89	66.11
74	32.32	67.68
75	30.73	68.27
76	29.33	70.77
77	27.43	72.57
78	25.71	74.29
79	24.40	75.60
80	22.62	77.38
81	21.26	78.74
82	19.39	80.61
83	17.97	82.03
84	16.53	83.47
85	15.11	84.89
86	13.61	86.39
87	12.03	87.97
88	10.48	89.52
89	9.43	90.57
90	7.83	92.17
91	6.75	93.25

<i>Age</i>	<i>Life Estate</i>	<i>Remainder</i>
92 .....	5.66 .....	94.34
93 .....	4.65 .....	95.35
94 .....	3.44 .....	96.56
95 .....	2.87 .....	97.13

Tabel Showing the Present Value of \$1,000, Payable at the End of 40 or Any Less Number of Years, Interest Being Compounded at Various Rates

Year	3 Per Cent	3½ Per Cent	4 Per Cent	4½ Per Cent	5 Per Cent	6 Per Cent
1-----	\$ 970 .87	\$ 966 .18	\$ 961 .54	\$ 956 .94	\$ 952 .38	\$ 943 .40
2-----	942 .60	933 .51	924 .56	915 .73	907 .03	890 .00
3-----	915 .14	901 .94	889 .00	876 .30	863 .84	839 .62
4-----	888 .49	871 .44	854 .80	838 .56	822 .70	792 .09
5-----	862 .61	841 .97	821 .93	802 .45	783 .53	747 .26
6-----	837 .48	813 .50	790 .31	767 .90	746 .22	704 .96
7-----	813 .09	785 .99	759 .92	734 .83	710 .68	665 .06
8-----	789 .41	759 .41	730 .69	703 .19	676 .84	627 .41
9-----	766 .42	733 .73	702 .59	672 .90	644 .61	591 .90
10-----	744 .09	708 .92	675 .56	643 .93	613 .91	558 .39
11-----	722 .42	684 .95	649 .58	616 .20	584 .68	526 .79
12-----	701 .38	661 .78	624 .60	589 .66	556 .84	496 .97
13-----	680 .95	639 .40	600 .57	564 .27	530 .32	468 .84
14-----	661 .12	617 .78	577 .48	539 .97	505 .07	442 .30
15-----	641 .86	596 .89	555 .26	516 .72	481 .02	417 .27
16-----	623 .17	576 .71	533 .09	494 .47	458 .11	393 .65
17-----	605 .02	557 .20	513 .37	473 .18	436 .30	371 .36
18-----	587 .39	538 .36	493 .63	452 .80	415 .52	350 .34
19-----	570 .29	520 .16	474 .64	433 .30	395 .73	330 .51
20-----	553 .68	502 .57	456 .39	414 .64	376 .89	311 .80
21-----	537 .55	485 .57	438 .83	396 .79	358 .94	294 .16
22-----	521 .89	469 .15	421 .96	379 .70	341 .85	277 .51
23-----	506 .69	453 .29	405 .73	363 .35	325 .57	261 .80
24-----	491 .93	437 .96	390 .12	347 .70	310 .07	246 .98
25-----	477 .61	423 .15	375 .12	332 .73	295 .30	233 .00
26-----	463 .69	408 .84	360 .69	318 .40	281 .24	219 .81
27-----	450 .19	395 .01	346 .82	304 .69	267 .85	207 .37
28-----	437 .08	381 .65	333 .48	291 .57	255 .09	195 .63
29-----	424 .35	368 .75	320 .65	279 .02	242 .95	184 .56
30-----	411 .99	356 .28	308 .32	267 .00	231 .38	174 .11
31-----	399 .99	344 .23	296 .46	255 .50	220 .36	164 .25
32-----	388 .34	332 .59	285 .06	244 .50	209 .87	154 .96
33-----	377 .03	321 .34	274 .09	233 .97	199 .87	146 .19
34-----	366 .04	310 .48	263 .55	223 .90	190 .35	137 .91
35-----	355 .38	299 .98	253 .42	214 .25	181 .29	130 .11
36-----	345 .03	289 .83	243 .67	205 .03	172 .66	122 .74
37-----	334 .98	280 .03	234 .30	196 .20	164 .44	115 .79
38-----	325 .23	270 .56	225 .29	187 .75	156 .61	109 .24
39-----	315 .75	261 .41	216 .62	179 .67	149 .15	103 .06
40-----	306 .56	252 .57	208 .29	171 .93	142 .05	97 .22



## DESCENTS

## RULES OF DESCENT.

- Rule 1. Lineal descent.
- Rule 2. Females inherit with males, younger with older children; advancements.
- Rule 3. Lineal descendant represents ancestor.
- Rule 4. Collateral descent of estate derived from ancestor.
- Rule 5. Collateral descent of estate not derived from ancestor.
- Rule 6. Half blood inherits with whole; parents from child.
- Rule 7. Unborn infant may be heir.
- Rule 8. Widow may take as heir.
- Rule 9. Illegitimate children inherit from mother.
- Rule 10. Heirs of illegitimate.
- Rule 11. Estate for life of another not devised deemed inheritance.
- Rule 12. Seizin defined.
- Rule 13. Issue of certain colored persons to inherit.

**Rules of descent.** When any person dies seized of any inheritance or of any right thereto, or entitled to any interest therein, not having devised the same, it shall descend under the following rules:

C. S., 1654.

Descents in this State are regulated by statute and not by the common law: *University v. Markham*, 174-338; *Edwards v. Yearby*, 168-663. Upon death of ancestor intestate, title to his estate descends and vests at once in his heirs; title cannot in such circumstances stand in abeyance and vest in future: *Harris v. Russell*, 124-547. As to "seized" in this sentence, see rule 12 of this section and *Early v. Early*, 134-258 at 266. For general discussion of canons of descent, see *Clement v. Cauble*, 55-86.

*Rule 1, Lineal descent.* Every inheritance shall lineally descend forever to the issue of the person who died last seized, entitled or having any interest therein, but shall not lineally ascend, except as hereinafter provided.

C. S., 1654.

Rule merely referred to: *Norton v. McDevit*, 122-755.

Contrary to the rule of the common law, neither actual nor legal seizin is necessary under the statutory rule to make a stock of inheritance: *Sears v. McBride*, 70-152; *Early v. Early*, 134-258; *Redding v. Vogt*, 140-562; and see under rule 12 of this section.

**DESCENT OF REVERSIONS AND REMAINDERS.** Under present rules of descent, a remainder descends as if it were an estate in possession; so where, during the continuance of the particular estate, the original remainderman died and then his only child died in infancy, the remainder vested, at the end of the particular estate, in the heirs of the infant and not in the heirs of original remainderman, *Early v. Early*, 134-258, distinguishing *King v. Scoggin*, 92-99, and *Lawrence v. Pitt*, 46-344, as involving earlier statutes.

*Rule 2, Females inherit with males, younger with older children; advancements.* Females shall inherit equally with males, and younger with older children: *Provided*, that when a parent dies intestate, having in his or her lifetime settled upon or advanced to any of his or her children any real or personal estate, such child so advanced in real estate shall be utterly excluded from any share in the real estate descended from such parent, except so much thereof as will, when added to the real estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And any child so advanced in personal estate shall be utterly excluded from any share in the personal estate of which the parent died possessed, except so much thereof as will, when added to the personal estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And in case any one of the children has been advanced in real estate of greater value than an equal share thereof which may come to the other children, he or his legal representatives shall be charged in the distribution of the

personal estate of such deceased parent with the excess in value of such real estate so advanced as aforesaid, over and above an equal share as aforesaid. And in case any of the children has been advanced in personal estate of greater value than an equal share thereof which shall come to the other children, he or his legal representative shall be charged in the division of the real estate, if there be any, with the excess in value, which he may have received as aforesaid, over and above an equal distributive share of the personal estate.

C. S., 1654.

This rule abolishes preference of male over female line and places males and females on perfect equality both as to collateral and lineal descent: *Bell v. Dozier*, 12-334.

ADVANCEMENTS. Nature of, and general principles regulating advancements: *Thompson v. Smith*, 160-256. Whether gift, loan, or advancement depends on intention of parent at time of transfer: *Ibid.* Value of advancement to be estimated as of time it is made: *Ward v. Riddick*, 57-22; *Lamb v. Carroll*, 28-4; *Stallings v. Stallings*, 16-298. See further for advancements, under Distribution.

Rights of adopted child, C. S., 185; adopted child inherits how: *King v. Davis*, 91-142.

*Rule 3, Lineal descendant represents ancestor.* The lineal descendants of any person deceased shall represent their ancestor, and stand in the same place as the person himself would have done had he been living.

C. S., 1654.

Representation under the rule is indefinite as well among collateral as among lineal kindred: *Johnston v. Chesson*, 59-147. So heirs of deceased collaterals represent their ancestor, and take what he, if living, would have taken: *Draper v. Bradley*, 126-72.

In descent of real property, principle of representation is applied whether heirs in equal or unequal degree, and heirs take per stirpes and not per capita in either case: *Crump v. Faucett*, 70-345; *Cromartie v. Kemp*, 66-382; *Haynes v. Johnson*, 58-124; *Clement v. Cauble*, 55-82. But in distribution of personal property, under section 126, representation is resorted to only when claimants in equal degree, and not among those in unequal degree: *Ellis v. Harrison*, 140-444.

Heirs of naked trustee who joined in mortgage take no interest, legal or equitable: *Fleming v. Barden*, 126-450.

*Rule 4, Collateral descent of estate derived from ancestor.* On failure of lineal descendants, and where the inheritance has been transmitted by descent from an ancestor, or has been derived by gift, devise, or settlement from an ancestor, to whom the person thus advanced would, in the event of such ancestor's death, have been the heir or one of the heirs, the inheritance shall descend to the next collateral relations, capable of inheriting, of the person last seized, who were of the blood of such ancestor, subject to the two preceding rules.

C. S., 1654.

Under this rule descended estates and certain purchased estates (derived by gift, devise, or settlement from an ancestor) descend to the nearest relatives of the blood of the ancestor or person from whom the estate moved: *Burgwyn v. Devereux*, 23-586. See *Bell v. Dozier*, 12-333; *Watson v. Sullivan*, 153-246. Where through a series of descents and settlements an estate goes to a person who dies without issue, it reverts back to those of his collateral relations who would be heirs of the ancestor from whom it originally descended or by whom it was originally settled: *Poisson v. Pettaway*, 159-650; *Wilkerson v. Bracken*, 24-315; *Felton v. Billups*, 19-308. Collaterals of such blood, however remote, exclude collaterals not of that blood: *Poisson v. Pettaway*, 159-650; *Dozier v. Grandy*, 66-484; *Little v. Buie*, 58-10. Descent under the rule is per stirpes and not per capita: *Cromartie v. Kemp*, 66-382; *Haynes v. Johnson*, 58-124; *Clement v. Cauble*, 55-82.

This rule to be construed with rule 6 of this section: *Noble v. Williams*, 167-112; *Paul v. Carter*, 153-26. Where estate vests in surviving mother or father under rule 6, immaterial whether such parent be of blood of purchasing ancestor: *McMichal v. Moore*, 56-471.

This rule applies only when there is no disposition of the land by will which would interfere with prescribed course of descent: *Kirkman v. Smith*, 174-603.

When land is devised to one who could not be an heir of deviser (as to grandson who died intestate during his father's life), upon the death of devisee such land descends not under this rule, but as acquired lands under rules 5 and 6: *Osborne v. Widenhouse*, 56-238; see *Burgwyn v. Devereux*, 23-586.

When will provided for conversion of land into personalty upon future contingency which never happened, until such contingency happened land descended as ancestral realty under this rule: *Elliott v. Loftin*, 160-361.

Illustrative cases: where heir, nearest relative of ancestor acquiring estate, was brother: *Jones v. Hoggard*, 108-181—sister and a sister's child to exclusion of half-brother, *Noble v.*



Williams, 167-112—brother and sister to exclusion of half-sister, *Forbes v. Savage*, 173-706—paternal aunt in exclusion of paternal grandfather and maternal relatives: *Gillespie, v. Foy*, 40-280.

Cases under obsolete statutes superseded by this rule: *Seville v. Whedbee*, 12-160; *Ham v. Martin*, 8-423; *Doe v. Sheppard*, 7-334.

Rule merely referred to: *Weeks v. Quinn*, 135-425; *Early v. Early*, 134-258; *Sawyer v. Sawyer*, 28-408.

*Rule 5, Collateral descent of estate not derived from ancestor.* On failure of lineal descendants, and where the inheritance has not been transmitted by descent or derived as aforesaid from an ancestor, or where, if so transmitted or derived, the blood of such ancestor is extinct, the inheritance shall descend to the next collateral relation, capable of inheriting, of the person last seized, whether of the paternal or maternal line, subject to the second and third rules.

C. S., 1654.

In descent of acquired estates the only qualification necessary for collateral heir is that he be nearest relation of person last seized: *Bell v. Dozier*, 12-333.

Where estate had been transmitted by descent, and blood of acquiring ancestor is extinct, upon death of person last seized intestate and without issue, estate descended to his nearest collateral relations: *University v. Brown*, 23-387.

For cases under old act of 1784, superseded by this rule, see *Ross v. Toms*, 9-9; *Pritchard v. Turner*, 9-435.

*Rule 6, Half blood inherits with whole; parents from child.* Collateral relations of the half blood shall inherit equally with those of the whole blood, and the degrees of relationship shall be computed according to the rules which prevail in descents at common law: *Provided*, that in all cases where the person last seized leaves no issue capable of inheriting, nor brother, nor sister, nor issue of such, the inheritance shall vest in the father or mother, as tenants in common if both are living, and if only one of them is living, then in such survivor.

C. S., 1654.

This rule and rule 4 should be construed together: *Paul v. Carter*, 153-26; *Watson v. Sullivan*, 153-246; *Noble v. Williams*, 167-112. Where person last seized survived by child and widow, and child inherits estate from him and dies before widow, heirs of widow and not those of husband inherit estate: *Weeks v. Quinn*, 135-425. Where child died leaving no issue capable of inheriting, nor brother, nor sister, nor issue of such, but leaving father surviving, inheritance vests in him: *Jarvis v. Davis*, 99-42; *Kincaid v. Beatty*, 98-340; *McMichal v. Moore*, 56-473—though in such case, where father dead, estate vests in mother, *Early v. Early*, 134-266. Where person died seized of lands descended through mother from her father, and left no issue, nor brother nor sister, except half-sister not of mother's blood, the father surviving took inheritance: *Little v. Buie*, 58-10. Where person dies without issue or sisters or brothers or issue of same, the father or mother will take inheritance regardless of whether he or she is of blood of purchasing ancestor: *McMichal v. Moore*, 56-471.

Proviso in rule applies to cases where surviving brother or sister cannot inherit, as well as to cases where none survive descendants: *Watson v. Sullivan*, 153-246; *Bell v. Dozier*, 12-333.

In cases of adoption, the natural father inherits from the child to the exclusion of the adopted father: *Edwards v. Yearby*, 163-563.

For cases under old act of 1784, superseded by this rule, see *Ross v. Toms*, 9-9; *Pritchard v. Turner*, 9-435; *Doe v. Sheppard*, 7-334.

For decision prior to amendment of rule 1, and passage of rule 12, which changed law, see *Lawrence v. Pitt*, 46-344, as explained in *Sears v. McBride*, 70-152.

As bearing upon rule, see *Dozier v. Grandy*, 66-484; *McKay v. Hendon*, 7-209.

As between natural and adopted parent, former inherits from child: *Edwards v. Yearby*, 168-663.

*Rule 7, Unborn infant may be heir.* No inheritance shall descend to any person, as heir of the person last seized, unless such person shall be in life at the death of the person last seized, or shall be born within ten lunar months after the death of the person last seized.

C. S., 1654.

Upon death of father seized of lands, his wife being then enciente, inheritance will immediately vest in child en ventre sa mer: *Deal v. Sexton*, 144-157. Inheritance not divested by birth of child more than ten lunar months after death of person last seized: *Britton v. Miller*, 63-270. Rule only applicable where person last seized has died since enactment of same: *Rutherford v. Green*, 37-121.

*Rule 8, Widow may take as heir.* When any person dies leaving none who can claim as heir to him, his widow shall be deemed his heir, and as such shall inherit his estate.

C. S., 1654.

Widow is heir only when there is no one who can claim as heir of the decedent: *Powers v. Kite*, 83-156; *University v. Markham*, 174-338. This rule applies only as to property undevise by the husband: *Grantham v. Jinnette*, 177-229.

*Rule 9, Illegitimate children inherit from mother.* Every illegitimate child of the mother and the descendants of any such child deceased shall be considered an heir: *Provided, however*, that where the mother leaves legitimate and illegitimate children such illegitimate child or children shall not be capable of inheriting of such mother any land or interest therein which was conveyed or devised to such mother by the father of the legitimate child or children; but such illegitimate child or descendant shall not be allowed to claim, as representing such mother, any part of the estate of her kindred, either lineal or collateral.

C. S., 1654.

This rule relates to descents from mother to her illegitimate children and their descendants, and allows illegitimates and their descendants to inherit from their mother, in default of legitimate issue, but excludes the right to inherit any part of estate of mother's kindred, lineal or collateral—connection is broken in ascending line at the mother: *University v. Markham*, 174-338; *Bettis v. Avery*, 140-184; *Flintham v. Holder*, 16-347.

When land devised to daughter with limitation over on her dying "without leaving a lawful heir," and she dies leaving an illegitimate child, such child is, under this rule, a lawful heir: *Harrell v. Hagan*, 147-111. See *fairly v. Priest*, 56-383.

Rule merely referred to: *Norton v. McDevit*, 122-759; *Tucker v. Tucker*, 110-334, 108-235; *Ivey v. Granberry*, 66-228.

See, further, as to rights of illegitimates, under rule 10 of this section.

Illegitimate's right of inheritance after legitimation by court proceeding or by subsequent marriage of mother and reputed father, see C. S., 277-279.

*Rule 10, Heirs of illegitimate.* Illegitimate children shall be considered legitimate as between themselves and their representatives, and their estates shall descend accordingly in the same manner as if they had been born in wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall descend to such person as would inherit if all such children had been born in wedlock: *Provided*, that when any illegitimate child dies without issue, his inheritance shall vest in the mother in the same manner as is provided in rule six of this chapter.

C. S., 1654.

Illegitimate children of same mother may inherit from each other: *Powers v. Kite*, 83-156; *McBride v. Patterson*, 78-412 (discussing history of statute and earlier cases); *Flintham v. Holder*, 16-345. See *University v. Markham*, 174-338—without regard to the status or color of father: *Ashe v. Mfg. Co.*, 154-241.

Legitimate brothers and sisters share in the inheritance of deceased illegitimate brother, all having same mother: *McBride v. Patterson*, 78-412.

This rule applies to illegitimate children, and is intended to affect only inheritances as between them and their representatives; it is not applicable to the case of a legitimate child of illegitimate father who claims as heir to the illegitimate child of such father's illegitimate sister: *Bettis v. Avery*, 140-184.

In determining mother's right to inherit, under proviso to this rule, rules 6 and 10 are construed together, and mother must survive illegitimate child to be within proviso: *University v. Markham*, 174-338.

Persons born in slavery of slave parents, who were not legitimated by marriage of parents subsequent to war, have right of illegitimates as between themselves; hence, where there are two brothers coming under this description, and one dies leaving no issue or brother or sister, other brother inherits: *Tucker v. Tucker*, 108-235.

Rule referred to: *Kenney v. R. R.*, 167-14; *Tucker v. Tucker*, 110-334; *Arrington v. Alston*, 6-326.

*Rule 11, Estate for life of another, not devised, deemed inheritance.* Every estate for the life of another, not devised, shall be deemed an inheritance of the deceased owner, within the meaning and operation of this chapter.

C. S., 1654.

See *Batchelor v. Whitaker*, 88-356; *Brown v. Brown*, 168-4.



*Rule 12, Seizin defined.* Every person, in whom a seizin is required by any of the provisions of this chapter, shall be deemed to have been seized, if he may have had any right, title, or interest in the inheritance.

C. S., 1654.

All that is required by rule for creation of new stock of inheritance is that person from whom descent claimed should have had, at time of descent cast, some right, title, or interest in inheritance, whether same vested in possession or not: *Early v. Early*, 134-267—for, under rule, neither actual or legal seizin necessary to make stock in the devolution of estates, *Sears v. McBride*, 70-152. See, also, under rule 1 of this section.

Rule merely referred to: *Redding v. Vogt*, 140-562; *Weeks v. Quinn*, 135-425; *Boyd v. Redd*, 118-680.

*Rule 13, Issue of certain colored persons to inherit.* The children of colored parents born at any time before the first day of January, one thousand eight hundred and sixty-eight, of persons living together as man and wife, are declared legitimate children of such parents or either one of them, with all the rights of heirs at law and next of kin, with respect to the estate or estates of any such parents, or either one of them. If such children be dead, their issue shall represent them with all the rights of heirs at law and next of kin provided by this section for their deceased parents or either of them if they had been living; and the provision of this section shall apply to the estates of such children as are now deceased or otherwise.

C. S., 1654.

There are two essential conditions of rule, exclusive cohabitation subsisting at birth of child and paternity of party from whom property claimed is derived: *Spaugh v. Hartman*, 150-454; *Croom v. Whitehead*, 174-305; *Wall v. Fleming*, 174-167; *Nelson v. Hunter*, 140-598; *Woodward v. Blue*, 107-411, 103-116; *Branch v. Walker*, 102-34. These essentials may be shown by reputation, declarations and conduct: *Spaugh v. Hartman*, 150-454.

Rule is valid as to descents after its passage: *Woodward v. Blue*, 103-109—and renders legitimate the children of all colored parents living together as man and wife born before January 1, 1868, *Ibid.* Children of woman of mixed blood, whose mother was white woman, who lived with slave as wife at time of their birth, are rendered legitimate: *Ibid.* Operation of rule does not extend beyond those persons occupying relation of parent and child: *Tucker v. Bellamy*, 98-31. Where former slave died in 1880, seized of lands, without issue, but leaving surviving her children of brother, who died in 1860, a slave, such children incapable of taking lands by descent: *Ibid.* Persons born in slavery, of slave parents, who were not legitimized by parents marrying subsequent to war, not legitimized by rule, except to extent of inheriting from parents: *Tucker v. Tucker*, 108-235. Rule intended to apply to colored persons cohabiting as man and wife, who occupied such relations to each other exclusively: *Branch v. Walser*, 102-34—and not where slave cohabited with several women, also slaves, at same time, *Ibid.* Rule operates only prospectively, and could not divest any estate theretofore acquired: *Jones v. Hoggard*, 108-178; *Tucker v. Bellamy*, 98-33.

Rule legitimates child of colored parents born before January 1, 1868, and merely extends child's right of inheritance to estate of father, which, before this enactment, was restricted to estate of mother: *Bettis v. Avery*, 140-184—but does not transmit any title to such person claiming land as heir of illegitimate first cousin, *Ibid.* Children of slave parents, born prior to January 1, 1868, whose marriage was duly legitimized as provided by section 2497, are legitimate, and can inherit lands of which father died seized: *Jones v. Hoggard*, 108-178—and are also entitled to inherit lands of which mother died seized, to exclusion of children born during cohabitation of mother with another slave, which relation ceased prior to emancipation, *Ibid.*

Fact of cohabitation raises presumption that child is issue of persons cohabiting as man and wife: *Erwin v. Bailey*, 123-635; *Woodward v. Blue*, 107-407, 103-109—yet such presumption may be rebutted, and evidence to repel inference of paternity not subject to stringent rules which apply in cases of established legal marriage, *Woodward v. Blue*, 107-407, 103-109.

## CURTESY AND DOWER

**Estate by the curtesy.** Every man who has married or shall marry a woman, and by her has issue born alive, shall, after her death intestate as to the lands, tenements and hereditaments hereinafter mentioned, be entitled to an estate as tenant by the curtesy during his life, in all the lands, tenements and hereditaments whereof his said wife was beneficially seized in deed during the coverture, wherein the said issue was capable of inheriting, whether the said seizin was of a legal or of an equitable estate; except that when the



wife has obtained a divorce *a mensa et thoro*, and is not living with her husband at her death, or when the husband has abandoned his wife, or has maliciously turned her out of doors, and they are not living together at her death; or if the husband has separated himself from his wife, and is living in adultery at her death, he shall not be tenant by the curtesy of her lands, tenements and hereditaments.

C. S., 2519

Requisites and attributes of tenancy by curtesy at common law: *Richardson v. Richardson*, 150-549; *Cobb v. Rasberry*, 116-137; *Taylor v. Taylor*, 112-134; *Morris v. Morris*, 94-613; *Long v. Graeber*, 64-431; *Houston v. Brown*, 52-161. Consideration of birth alive as requisite: *Fleming v. Sexton*, 172-250.

Tenancy by curtesy initiate is now, by constitution and statutes, stripped of common-law features and reduced to bare right of occupancy; but tenant by curtesy initiate still technically a freeholder: See section 2510—and regarded as having an interest in wife's land, *Jackson v. Beard*, 162-105; *McGlennery v. Miller*, 90-215. But compare *Sipe v. Herman*, 161-107, and dissenting opinions in *Jackson v. Beard*, 162-105.

Estate of husband as tenant by curtesy consummate remains as at common law, and is liable to sale under execution: *Thompson v. Wiggins*, 109-508; *McCaskill v. McCormac*, 99-548.

Husband must join in wife's deed to pass his interest in her land as tenant by curtesy initiate: *McGlennery v. Miller*, 90-215—and his act in joining is so far contractual that if he is infant at the time he may subsequently disaffirm the deed in apt time, *Jackson v. Beard*, 162-105. Husband as tenant by curtesy initiate is necessary party to suit respecting wife's land: *McGlennery v. Miller*, 90-215.

Wife's obtaining divorce *a mensa* suspends husband's rights in her lands until a reconciliation: *Taylor v. Taylor*, 112-134.

Where deed to wife, who bought and paid for land, was lost without registration, and after her death her husband procured a deed to be executed to himself, he held the land, by implication of law, as trustee for their children, subject to his life estate by the curtesy: *Norcum v. Savage*, 140-472.

**LANDS SUBJECT TO CURTESY.** For husband to have curtesy, wife must have had seizin in deed at common law: *Nixon v. Williams*, 95-103; *In re Dixon*, 156-26—exception as to wild lands, *Pierce v. Wannett*, 32-466. Where descent from ancestor in actual seizin is cast on married woman, actual entry is not necessary to entitle husband to curtesy: *Childers v. Bumgarner*, 53-297.

Seizin in wife subject to outstanding life estate does not give husband curtesy: *Jones v. Whichard*, 163-241; *In re Dixon*, 156-26; *Carter v. Williams*, 43-177. But outstanding term of years does not prevent curtesy: *Carter v. Williams*, 43-177. Husband entitled to curtesy in wife's equitable "estates": *Sentill v. Robeson*, 55-510; *Hunt v. Satterwhite*, 85-73. But not of lands held by the wife as trustee: *Norton v. McDevit*, 122-755; Seizin of wife as tenant in common is sufficient: *Childers v. Bumgarner*, 53-297; *Hunt v. Satterwhite*, 85-73—or as joint tenant since survivorship abolished, *Ibid*.

Where wife has life estate with power of appointment in fee at her death, husband not entitled to curtesy if she fails to appoint: *Graves v. Trueblood*, 96-495.

Where wife's lands are mortgaged for husband's debt, and mortgage is foreclosed after her death, surplus goes to heirs, charged with husband's curtesy: *Harrington v. Rawls*, 136-65.

Wife's devise of lands acquired since 1868 defeats husband's curtesy: *Freeman v. Lide*, 176-434, and see section 2511.

**Who entitled to dower.** Widows shall be endowed as at common law as in this chapter defined: *Provided*, if any married woman shall commit adultery, and shall not be living with her husband at his death, or shall be convicted of the felonious slaying of her husband, or being accessory before the fact to the felonious slaying of her husband, she shall thereby lose all right to dower in the lands and tenements of her husband; and any such adultery or conviction may be pleaded in bar of any action or proceeding for the recovery of dower.

C. S., 4099.

Nature and history of dower discussed: *Corporation Com. v. Dunn*, 174-679. Widow's claim is in nature of a "writ of right" and is favored by law, and cannot be lost or forfeited, except for causes prescribed by statute or common law: *Brown v. Morisey*, 126-772.

Where decree in an action for divorce *a mensa et thoro* directed that husband pay a sum in gross and be discharged from all further liability for the support of his wife, after his death wife was entitled to dower in his lands: *Taylor v. Taylor*, 93-418.

Wife who commits adultery and is not living with her husband at time of his death is thereby deprived of her dower: *Lee v. Thornton*, 176-208; *Phillips v. Wiseman*, 131-402. Bigamy of wife forfeits all right of dower in first husband's estate: *Irby v. Wilson*, 21-568.

Allotment of dower, see C. S., ch. 80, art. 3. No statute of limitations barring application of widows for dower: *Brown v. Morisey*, 126-772; *Simonton v. Houston*, 78-418.



**In what property widow entitled to dower.** Subject to the provision in the preceding section, every married woman, upon the death of her husband intestate, or in case she shall dissent from his will, shall be entitled to an estate for her life in one-third in value of all the lands, tenements and hereditaments whereof her husband was seized and possessed at any time during the coverture, in which third part shall be included the dwelling-house in which her husband usually resided, together with offices, outhouses, buildings and improvements thereunto belonging or appertaining; she shall in like manner be entitled to such an estate in all legal rights of redemption and equities of redemption or other equitable estates in lands, tenements and hereditaments whereof her husband was seized in fee at any time during the coverture, subject to all valid encumbrances existing before the coverture or made during it with her free consent lawfully appearing thereto. The jury summoned for the purpose of assigning dower to a widow shall not be restricted to assign the same in every separate and distinct tract of land, but may allot her dower in one or more tracts, having a due regard to the interest of the heirs as well as to the right of the widow. This section shall not be construed so as to compel the jury selected to allot dower to allot the dwelling-house in which the husband usually resided, when the widow shall request that the same be allotted in other property.

C. S., 4100.

For partition and dower, see C. S., 3226.

For annotations, see C. S., 4100.

**Widow's interest not liable for husband's debts.** The dower or right of dower of a widow, and such lands as may be devised to her by his will, if such lands do not exceed the quantity she would be entitled to by right of dower, although she has not dissented from such will, shall not be subject to the payment of debts due from the estate of her husband during the term of her life.

C. S., 4098.

Failure of the widow to dissent does not deprive her of her dower in the land as against the rights of creditors: *Trust Co. v. Stone*, 176-270; *Lee v. Giles*, 161-541; *Shackelford v. Miller*, 91-181; *Simonton v. Houston*, 78-408; *Avery, ex parte*, 64-113—and she is entitled to the same remedies as in an application for dower, *Simonton v. Houston*, 78-408.

Where will gave certain legacies and devises to widow in lieu of dower, which amounted to less in value than her dower, such legacies and devises were not assets liable to pay debts of testator: *Smith v. Smith*, 79-455. A decree of sale in a petition to sell land for assets does not estop the widow to claim dower in the proceeds unless her right was adjudicated: *Trust Co. v. Stone*, 176-270.

Where the widow is entitled to a homestead in right of her husband she is not put to her election to hold under the will or against it by dissent: *Fulp v. Brown*, 153-531.

## DISTRIBUTION

**Order of distribution.** The surplus of the estate, in case of intestacy, shall be distributed in the following manner, except as hereinafter provided:

Statute analyzed: *Wells v. Wells*, 158-330. Distributed according to law of domicile at death: *Jones v. Layne*, 144-600; *Cade v. Davis*, 96-139; *Medley v. Dunlap*, 90-527; *Jones v. Gerock*, 59-190. Widow dissenting from will, how share ascertained: *Arrington v. Dortch*, 77-367; *Worth v. McNeil*, 57-272; *Credle v. Credle*, 44-225; *Hunter v. Husted*, 45-97. Widow's share goes to her personal representative: *Tart v. Tart*, 154-502. Infants in ventre sa mere: *Grant v. Bustin*, 21-77; *Hill v. Moore*, 5-233. Where will leaves proceeds of sale of land to heirs, grandchildren take per stirpes: *Lee v. Baird*, 132-755, and cases cited. Land to be sold and proceeds distributed becomes personalty, and "heirs" would mean next of kin: *Everett v. Griffin*, 174-106.

1. *If there are not more than two children*, one-third part to the widow of the intestate, and all the residue by equal portions to and among the children of the intestate and such persons as legally represent such children as may then be dead.

Case where "child's share" in will interpreted: *Eller v. Lillard*, 107-486—"child's part" in will interpreted, *McKrow v. Painter*, 89-440. "Child's part" in statute interpreted: *Headen v. Headen*, 42-162.

Right of adopted child, C. S., 185; adopted child inherits, how: *King v. Davis*, 91-142.

2. *If there are more than two children*, then the widow shall share equally with all the children and be entitled to a child's part.

3. *If there is no child nor legal representative of a deceased child*, then one-half the estate shall be allotted to the widow, and the residue be distributed equally to every of the next of kin of the intestate, who are in equal degree, and to those who legally represent them.

*Baptist University v. Borden*, 132-501. Who are "next of kin": *Peterson v. Webb*, 39-56. Representation among collateral kindred: *Moore v. Rankin*, 172-599. Estate divided between widow and mother: *Wells v. Wells*, 156-246; S. c., 158-330.

4. *If there is no widow*, the estate shall be distributed, by equal portions, among all the children, and such persons as legally represent such children as may be dead.

As to grandchildren: *Ellis v. Harrison*, 140-444; *Skinner v. Wynne*, 55-41.

5. *If there is neither widow nor children, nor any legal representative of the children*, the estate shall be distributed equally to every of the next of kin of the intestate, who are in equal degree, and those who legally represent them.

Next of kin: *Peterson v. Webb*, 39-56; *Gillespie v. Foy*, 40-280; representation and per capita, *Nelson v. Blue*, 63-659; *Johnston v. Chesson*, 59-147.

6. *When parents take*. If, in the lifetime of its father and mother, a child dies intestate, without leaving husband, wife, or child, or the issue of a child, its estate shall be equally divided between the father and mother. If one of the parents is dead at the time of the death of the child, the surviving parent shall be entitled to the whole of the estate. The terms "father" and "mother" shall not apply to a step-parent, but shall apply to a parent by adoption.

Father and mother: *Wells v. Wells*, 158-330; S. c., 156-246; *Davis v. R. R.*, 136-115.

As between natural and adopted parent, the former inherits from child: *Edwards v. Yearby*, 168-663.

7. *When widow takes all*. If there is no child nor legal representative of a deceased child nor any of the next of kin of the intestate, then the widow, if there is one, shall be entitled to all the personal estate of such intestate.

Next of kin: *Peterson v. Webb*, 39-56.

8. *Distribution of a married woman's estate*. If a married woman die intestate leaving one child and a husband, the estate shall be equally distributed between the child and husband; if she leave more than one child and a husband, the estate shall be distributed in equal portions and the husband shall receive a child's part, the child or children of any child or children of the intestate who may have died prior to the mother to represent his, her, or their parent in such distribution.

C. S., 137.

See, also, C. S., 7.



*9. When illegitimates take.* Every illegitimate child of the mother dying intestate, or the issue of such illegitimate child deceased, shall be considered among her next of kin, and as such shall be entitled to a share of her personal estate as prescribed in this chapter. Illegitimate children, born of the same mother, shall be considered legitimate as between themselves and their representatives, and their personal estate shall be distributed in the same manner as if they had been born in lawful wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall be distributed among his mother and all such persons as would be his next of kin if all such children had been born in lawful wedlock.

C. S., 140.

Kennedy v. R. R., 167-14; Coor v. Starling, 54-243; Kimbrough v. Davis, 16-71.

Illegitimate's rights after legitimation by court proceeding or by subsequent marriage of mother and reputed father. See C. S., 277-279.

## DEATH BY WRONGFUL ACT

**Death by wrongful act; application and distribution of recovery.** When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured party had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their executors, administrators, collectors, or successors, shall be liable to an action for damages, to be brought within one year after such death, by the executor, administrator or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default causing the death amounts in law to a felony. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, but shall be disposed of as provided in this chapter for the distribution of personal property in case of intestacy.

In all actions brought under this section the dying declarations of the deceased as to the cause of his death shall be admissible in evidence in like manner and under the same rules as dying declarations of the deceased in criminal actions for homicide are now received in evidence.

C. S., 160.

**DISTRIBUTION OF RECOVERY.** The amount is not assets of the estate except for distribution: Hood v. Telegraph Co., 162-92. Not subject to widow's year's support: Broadnax v. Broadnax, 160-432. The statute of distributions of state: Neill v. Wilson, 146-242; Vance v. R. R., 138-460; Davis v. R. R., 136-115; Hartness v. Pharr, 133-566; Baker v. R. R., 91-308. University gets it, if no next of kin: Warner v. R. R., 94-250. The recovery is not liable to the debts of decedent: Neill v. Wilson, 146-242. Husband's right to his wife's share as distributee had she lived: Ibid. The right is determined as of the time of intestate's death: Ibid. Distribution of recovery under Federal Employers' Liability Act: Hudson v. R. R., 176-488; Horton v. R. R., 175-472; overruling In re Stone, 173-208.

## ADVANCEMENTS

**1. Advancements to be accounted for.** Children who shall have any estate by the settlement of the intestate, or shall be advanced by him in his lifetime, shall account with each other for the same in the distribution of the estate in the manner as provided by the second rule in the chapter entitled Descents, and shall also account for the same to the widow of the intestate in ascertaining her child's part of the estate.

C. S., 138.

**ADVANCEMENTS.** Defined and explained: Thompson v. Smith, 160-256; Tart v. Tart, 154-502; Griffin, ex parte, 142-116; Meadows v. Meadows, 33-148.

**ADVANCEMENTS ACCOUNTED FOR.** Grandchildren taking in their own right need not account for advancements to parents: *Skinner v. Wynne*, 55-41; *Lee v. Baird*, 132-755; *Headen v. Headen*, 42-159; *Daves v. Haywood*, 54-253. Child's part under a certain will discussed in *Eller v. Lillard*, 107-486; *McKrow v. Painter*, 89-440; *Headen v. Headen*, 42-162. Advancement by mother as well as father must be put in hotchpot: *Daves v. Haywood*, 54-253. A delivery necessary to constitute advancement of personalty: *Meadows v. Meadows*, 33-148. Children must account to widow, when: *Eller v. Lillard*, 107-486; *Arrington v. Dortch*, 77-367; *Worth v. McNeill*, 57-272; *Credle v. Credle*, 44-225; *Headen v. Headen*, 42-162. Will bequeathing personalty to children, less advancements, one child dying, how construed: *Scroggs v. Stevenson*, 100-354. Gifts are presumed to be advancements: *Griffin, ex parte*, 142-116; *Harper v. Harper*, 92-300; *Bradsher v. Cannady*, 76-445—but intention of parent governs, *Kiger v. Terry*, 119-458; *Harper v. Harper*, 92-300; *Barbee v. Barbee*, 109-299; *Melvin v. Bullard*, 82-33; *Bradsher v. Cannady*, 76-445—presumed not to be advancement when father owes child, *Haglar v. McCombs*, 66-345. Where in will bequest states it is not an advancement: *James v. James*, 76-331. Agreements between children as to advancements: *Bason v. Harden*, 72-281—between child and father, *Webb v. Lyon*, 40-67. Parol evidence competent to rebut presumption as to an advancement arising upon the face of a deed and to show parent's real intention: *Griffin, ex parte*, 142-116.

**GIFTS HELD TO BE ADVANCEMENTS.** Slaves, even though afterwards emancipated: *Banks v. Shannonhouse*, 61-284. Furniture to start child out in life: *Hollister v. Attmore*, 58-373; *Shiver v. Brock*, 55-137. Personalty to son-in-law: *Bridgers v. Hutchins*, 33-68. Services of a slave loaned by father to son: *Hanner v. Winburn*, 42-142. Slave that dies before intestate does: *Walton v. Walton*, 42-138. Slave to son-in-law an advancement to daughter: *Hicks v. Forrest*, 41-528. An estate *per autre vie*: *Dixon v. Coward*, 57-354. Land to daughter and son-in-law: *Jones v. Spaight*, 6-89.

**GIFTS HELD NOT TO BE ADVANCEMENTS.** Land to son-in-law: *Banks v. Shannonhouse*, 61-284. Land to child, where land in father's possession, but really devised from aunt: *Hollister v. Attmore*, 58-373. Money to supply child with necessities: *Meadows v. Meadows*, 33-148; see, also, *Walker v. Brooks*, 99-207.

In dividing residue in a will, no advancements regarded: *Donnell v. Mateer*, 40-7; *Richmond v. Vanhook*, 38-581; *Hurdle v. Elliott*, 23-174; *Jerkins v. Mitchell*, 57-207; *Johnston v. Johnston*, 39-9; *Brown v. Brown*, 37-309; *Croom v. Herring*, 11-393—unless will says distribution of residue must be as if testator died intestate, *Raiford v. Raiford*, 41-490. From what date advancement reckoned: *Shiver v. Brock*, 55-137. Interest calculated on advancements, when and how: *Daves v. Haywood*, 54-253; *Tayloe v. Bond*, 45-5; *Scroggs v. Stevenson*, 100-360. Advancements valued at time the estate passes, and not subject to interest or rents: *Tart v. Tart*, 154-502.

**2. Children advanced to render inventory; effect of refusal.** Where any parent dies intestate, who had in his or her lifetime given to, or put in the actual possession of, any of his or her children any personal property of what nature or kind soever, such child shall cause to be given to the administrator or collector of the estate an inventory, on oath, setting forth therein the particulars by him or her received of the intestate in his or her lifetime. In case any child who had, in the lifetime of the intestate, received a part of said estate, refuses to give such inventory, he shall be considered to have had and received his full share of the deceased's estate, and shall not be entitled to receive any further part or share.

C. S., 139.

*Kiger v. Terry*, 119-458; *Scroggs v. Stevenson*, 100-354; *Bradsher v. Cannady*, 76-446.

## ALLOTMENT TO AFTER-BORN CHILD

**1. Allotment to after-born child in real estate.** The share of an after-born child in real estate shall be allotted to him out of any lands not devised, if there is enough for that purpose; and if there is none undevised, or not enough, then the whole share, or the deficiency, as the case may be, shall be made up of the lands devised; and so much thereof shall be taken from the several devisees according to their respective values, as near as may be convenient, as will make the proper share of such child.

C. S., 141.

For right of after-born child to share in testator's estate, see C. S., 4169.

For all the beneficial purposes of heirship a child in ventre sa mere is considered absolutely born: *Deal v. Sexton*, 144-158. Presumption as to legitimacy, *Johnson v. Chapman*, 45-213. Inheritance of after-born children: *Watkins v. Flora*, 30-374; *Graves v. Barrett*, 126-267; *King v. Davis*, 91-142; *Deal v. Sexton*, 144-157.



**2. Allotment to after-born child in personal property.** The share of an after-born child in the personal estate shall be paid and delivered to him out of any such estate not bequeathed, if there is enough for that purpose; and if there is none undisposed of, or not enough, then the whole share of the deficiency, as the case may be, shall be made up from the estate bequeathed; and so much shall be taken from the several legacies, according to their respective values, as will make the proper share of such child.

C. S., 142.

Johnson v. Chapman, 45-213, 54-130. Right to share in personalty: Grant v. Bustin, 21-77; Hill v. Moore, 5-233.

**3. Allotment of personalty from proceeds of realty.** If, after satisfaction of the child's share of real estate out of undeviseed lands, there is a surplus of such lands, and there is no personal estate undisposed of, or not enough to make up his share of such estate, then the surplus of undeviseed land, or as much as may be necessary, shall be sold and the proceeds applied to making up his share of personal estate. And if, after satisfaction of the child's share of personal estate out of property undisposed of by the will, there is a surplus of such property, then the surplus thereof shall be applied, as far as it will go, in exoneration of land, both devised and descended; and the same shall be set apart and secured as real estate to such child, if an infant, *non compos*, or *feme covert*.

C. S., 143.

**4. Effect of allotment of realty; contribution to equalize burden.** Upon the allotment to such child of any real estate in the manner aforesaid, he shall thenceforth be seized thereof in fee simple; and the court shall give judgment severally, in favor of such of the devisees and legatees of whose lands and legacies more has been taken away than in proportion to the respective values of said lands and legacies, against such of said devisees and legatees of whose lands and legacies a just proportion has not been taken away, for such sums as will make the contribution on the part of each and every of them equitable, and in the ratio of the values of the several devisees and legacies.

C. S., 144.

**5. After-born child on allotment deemed devisee or legatee.** An after-born child after such decrees shall be considered and deemed in law a legatee and devisee as to his portion, shall be styled as such in all legal proceedings, and shall be liable to all the obligations and duties by law imposed on such: *Provided*, that all judgments or decrees bona fide obtained against the devisees and legatees previously to the preferring of any petition, and which were binding upon or ought to operate upon the lands and chattels devised or bequeathed, shall be carried into execution and effect notwithstanding, and the petitioner shall take his portion completely subject thereto: *Provided further*, that any suit instituted against the devisees and legatees previously to such petition shall not be abated or abatable thereby nor by the decree thereon, but shall go on as instituted, and the judgment and decree, unless obtained by collusion, be carried into execution; but on the filing of the petition, during the pendency of such suit, the petitioner, by guardian, if an infant, may become a defendant in the suit.

C. S., 145.

**6. Before settlement executor may have claimants' shares in estate ascertained.** In case no petition is filed within two years, as herein prescribed, the executor or administrator with the will annexed, before he shall pay or deliver the legacies in the will given, or before paying to the next of kin of the testator any residue undisposed of by the will, shall call upon the legatees, devisees, heirs and next of kin, and the said after-born child, by petition in the Superior Court, to litigate their respective claims, and shall pray the court to ascertain the share to which said child shall be entitled, and to apportion the shares and sums to which the legatees, devisees, heirs, or next of kin shall severally contribute toward the share to be allotted to said child, and the court shall adjudge and decree accordingly.

C. S., 146.

Johnson v. Chapman, 45-213; 54-130.

### YEAR'S ALLOWANCE

**Who entitled to allowance.** Every widow of an intestate, or of a testator from whose will she has dissented, shall be entitled, besides her distributive share in her husband's personal estate, to an allowance therefrom, for the support of herself and her family for one year after his decease, and such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of her husband: *Provided*, if any married woman shall commit adultery, and shall not be living with her husband at his death, or shall be convicted of the murder of her husband, or of being accessory before the fact to the murder of her husband, she shall thereby lose all right to a year's provision, and to a distributive share from the personal property of her husband, and such adultery or conviction may be pleaded in bar of any action or proceeding for the recovery of such rights and estates.

C. S., 4108.

For annotations, see C. S., 4108.

Procedure for assignment, C. S., ch. 80, art. 4.

Amount of allowance, C. S., 4120, 4125.

When children entitled, C. S., 4111.

As to distributive share in husband's estate, see Distribution.





UNIVERSITY OF N.C. AT CHAPEL HILL



00041100548

FOR USE ONLY IN  
THE NORTH CAROLINA COLLECTION

---



